

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In The Matter Of:)	Docket No.
)	
Elgin Community College)	Proceeding to Assess a Class II Civil Penalty
District 504,)	under Section 309(g) of the Clean Water Act,
)	33 U.S.C. § 1319(g)
Respondent)	
_____)	

CONSENT AGREEMENT AND FINAL ORDER

1. Complainant, the Director of the Water Division, United States Environmental Protection Agency, Region 5 (“EPA”), and Dann R. Kraatz, Martha J. Kraatz and DRKF, Inc. (“Respondents”) have agreed to the settlement of this action before the filing of a complaint. Therefore, this action is simultaneously commenced and concluded under Rules 22.13(b) and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* found at 40 C.F.R. §§ 22.13(b) and 22.18(b).

2. EPA institutes his civil administrative proceeding for the assessment of a civil penalty pursuant to the authority granted in Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(1)(A).

3. The Administrator of EPA has delegated this authority to the Regional Administrator of EPA Region 5, who has duly redelegated this authority to the Water Division Director, EPA Region 5.

4. Respondent consents to the entry of this Consent Agreement and Final Order (“CAFO”), all of the conditions of this CAFO, and the assessment of the civil penalty as outlined in this CAFO.

5. EPA and Respondent agree that the settlement of this matter pursuant to 40 C.F.R. § 22.13(b) is in the public interest and that the entry of this CAFO without engaging in litigation is the most efficient means of resolving this matter.

STATUTORY AND REGULATORY BACKGROUND

6. To restore and maintain the integrity of the nation’s water, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into navigable waters of the United States by any person, except in compliance with, *inter alia*, a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

7. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (“Corps”), to issue permits for the discharge of dredged or fill material into navigable waters.

8. Section 502(6) of the CWA 33 U.S.C. § 1362(6), defines the term “pollutant” to mean, *inter alia*, dredged spoil, solid waste, sewage, garbage, sewage sludge, biological materials, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

9. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of pollutant” to mean any addition of any pollutant to navigable waters from any point source.

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” to mean the waters of the United States.

11. 40 C.F.R. § 230.3(s) defines “waters of the United States” to include all waters which are, were, or may be used in interstate or foreign commerce, tributaries thereof, and wetlands adjacent to such waters.

12. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to mean any discernible, confined, and discrete conveyance from which pollutants are or may be discharged.

13. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311.

ALLEGATIONS

14. The Respondent in this matter is:

Elgin Community College, District No. 509
1700 Spartan Drive
Elgin, Kane County, Illinois 60123

15. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers ("Corps"), to issue permits for the discharge of dredged or fill material into navigable waters.

16. Section 301 of the CWA, 33 U.S.C. § 1311, prohibits the discharge of pollutants into navigable waters except in compliance with, inter alia, a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344.

17. The term "discharge of pollutants" is defined as "any addition of any pollutant to navigable waters from any point source...." 33 U.S.C. § 1362(12).

18. A "point source" is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

19. A "pollutant" is defined as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).

20. "Wetlands" are defined as "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." 40 C.F.R. § 232.2(f).

21 Respondent owns and controls the property situated in located in Section 21, Township 41 N, Range 8 E, in the City of Elgin, Kane County, Illinois (the "Site") (Attachment1).

22. Between June 2009 and continuing through March 2012, Respondent, using backhoes, excavators, bulldozers and other earth moving equipment other excavation equipment dredged and filled approximately 5.0 acres of wetlands abutting wetlands of Otter Creek, a tributary to the Fox River, which is a navigable water of the United States, under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, respectively, 33 U.S.C. § 1344(a) and 33 U.S.C § 403, (Attachment 2).

23. Prior to initiating work in June 2009, as identified in Paragraph 9, above, Respondent completed the following activities on the site:

(a) In July 1991, Respondent submitted a Section 404 CWA permit application to the Corps. The permit application included a wetland delineation identifying "jurisdictional" wetlands located on the site adjacent to Otter Creek.

(b) In 1994, Kane County completed an assessment and a advanced identification of Wetlands and rated the wetlands on the site (approximately 91 acres), as wetland with high functional values for stabilizing vegetation, retainingg sediments, removing nutrients, and providing stormwater retention.

(c) In July 2002, Respondent submitted a Section 404 CWA permit application to the Corps including a wetland assessment delineating five wetland areas and four waters of the United States on the site.

(d) In August 2005, Respondents submitted a Section 404 CWA permit application to the Corps. The application included a wetland delineation which in part, re-affirmed the wetland assessment identified in Paragraph 10 (c), above.

24. On June 7, 2012, the Corps, issued a "cease and desist" (C& D) letter to Respondents alleging that dredged and fill materials were discharged into wetlands, identified in Paragraph 22, above, in violation of Sections 404 and 301 of the CWA, 33 U.S.C. §§1344 and 311, respectively. The violations alleged by the Corps were undertaken during construction of a new stormwater detention pond and expansion of a student parking lot.

25. On August 15, 2012, in consultation with the Corps, EPA, pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), issued an formal information request to Respondent seeking to clarify the nature, extent and circumstances surrounding the alleged violation, cited by the Corps in Paragraph 24, above.

26. On October 10, 2012, the Corps and EPA visited the site concluding the site and the wetlands are physically abutting Otter Creek, and are hydraulically connected to the Fox River, a navigable-in-fact water of the United States, under Section 10 of the Rivers and Harbors Act (RHA), 33 U.S.C. § 403.

27. At all times relevant to the activities in Paragraph 9, above, Respondent did not and presently do not have a Section 404 CWA permit, authorizing the discharge of dredged and fill materials into wetlands abutting Otter Creek.

28. The wetlands and other waters of the United States identified in Paragraph 22, above are bordering, contiguous or neighboring Otter Creek, which is tributary to the Fox River, an interstate and navigable waters of the United States.

29. The wetlands filled and/or disturbed by the filling activity referenced in Paragraph 22, above, are "waters of the United States" as defined at 40 C.F.R. § 232.2(q) and "navigable waters", as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

30. Respondent did not have and presently does not have a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of pollutants referenced in Paragraphs 9, above, into wetlands and other waters of the United States.

31. The Respondent is a "person(s)" within the meaning of the definition set forth in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

32. The machinery referenced in Paragraphs 22, above, constitutes a "point source" within the meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

33. The discharged dredged materials referenced in Paragraph 22, above, constitutes "pollutants" within the meaning of the definitions set forth in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

34. The placement of the material in the wetlands referenced in Paragraph 22, above, constitutes a "discharge of pollutants" within the meaning of the definition set forth in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

35. Each discharge by Respondent of pollutants into navigable waters without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

36. Each day the discharged material remains in the wetland without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

37. The area described in Paragraph 22, above is a "wetland" as that term is defined by 40 C.F.R. § 230.3(t).

38. The wetland described in Paragraph 22, above, is a "water of the United States" and a "navigable water" as those terms are defined by 40 C.F.R. § 230.3(s) and 33 U.S.C. § 1362(7), respectively.

TERMS OF SETTLEMENT

Assessment and Payment of Penalty

39. Based upon the penalty factors set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and Respondents' agreement to comply with Section 404 of the CWA, EPA and Respondents agree to settle this matter for a civil penalty of [\$70,000].

40. For the purposes of this proceeding, and pursuant to 40 C.F.R. §§ 22.18(b) and (c), Respondents: (1) admit that EPA has jurisdiction over the subject matter set forth in this CAFO; and (2) neither admit nor deny the facts set forth in this CAFO.

41. For purposes only of allegations and agreements made herein, upon execution of this CAFO, Respondents waive all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, including, but not limited to, their right to request a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and its right to

appeallate review of the CAFO found at Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

42. Respondents shall pay the \$70,100 civil penalty by:

a. For checks sent by U.S. Postal Service, send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

* The check must note Respondents' names, the docket number of this CAFO and the billing document number

b. For checks sent by express mail (non-U.S. Postal Service), send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

* The check must note Respondents' names, the docket number of this CAFO and the billing document number

c. For electronic funds transfer, send the transfer payable to "Treasurer, United States of America," to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency"

* In the comment or description field of the electronic funds transfer, state Respondents' names, the docket number of this CAFO and the billing document number.

d. For Automated Clearinghouse (ACH) also known as REX or remittance express, and ACH electronic funds transfer, send the amount payable to “Treasurer, United States of America,” to:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22-checking

* In the comment area of the electronic funds transfer, state Respondents’ names, the docket number of this CAFO and the billing document number.

e. For on-line payment, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

43. This civil penalty is not tax deductible for federal tax purposes.

44. A transmittal letter stating Respondents’ names, complete address, and the case docket number must accompany the payment. Respondents shall simultaneously and separately send notice of such payment, including a copy of the check, to each of the following three persons at the address indicated:

Regional Hearing Clerk
U.S. EPA Region 5
77 West Jackson Blvd. (E-19J)
Chicago, IL 60604-3590

David Schulenberg
Water Division
U.S. EPA Region 5
77 West Jackson Blvd. (WW-16J)
Chicago, IL 60604-3590

Mark Palermo
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Blvd. (C-14J)

Chicago, IL 60604-3590

45. Respondents' failure to pay the assessed civil penalty, or any stipulated penalties due under Paragraph 44, below, in accordance with the provisions of this CAFO will result in the referral of this matter to the United States Department of Justice for collection in accordance with Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. In addition to any unpaid balance and interest on this penalty, Respondents shall also be required to pay attorneys' fees and costs for collection proceedings and a quarterly nonpayment penalty. This nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondents' penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

46. Notwithstanding any other provisions of this CAFO, interest shall accrue on any amount overdue under the terms of this CAFO at an annual rate calculated in accordance with 40 C.F.R. § 13.11.

47. If Respondents violate any requirement of this CAFO, Respondents must pay stipulated penalties to the United States as follows:

<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>
\$100	1 st through 14 th day
\$250	1 th through 30 th day
\$500	31 st day and beyond

These penalties will accrue from the date Respondents were required to meet each deadline until they achieve compliance with the deadline.

48. Respondents must pay any stipulated penalties within fifteen (15) days of receiving EPA's written demand for the penalties. Respondents shall use the method of payment

specified in Paragraph 31, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

OTHER MATTERS

49. This CAFO settles EPA's claims for civil penalties for the violations alleged above.

50. Nothing in this CAFO relieves Respondents of the duty to comply with the CWA or other federal, state or local laws, statutes or regulations.

51. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondents arising from the violations alleged in this CAFO. Notwithstanding any other provision of this CAFO, EPA expressly reserves any and all rights to bring an enforcement action pursuant to the Section 504 of the CWA, 33 U.S.C. § 1364, or other statutory authority should EPA find that the Site is presenting an imminent and substantial endangerment to the health or welfare of persons. EPA also expressly reserves the right to take any action authorized under Section 309 of the CWA, 33 U.S.C. § 1319 for any matters other than the violations alleged in this CAFO and to enforce compliance with this CAFO.

52. This CAFO binds both parties, their officers, directors, employees, successors, and assigns to this action. The representative of each party signing this CAFO certifies that he or she has authority to enter into the terms of this CAFO and bind that party to it.

53. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

54. Pursuant to 40 C.F.R. § 22.38, the State of Illinois was notified of this proceeding and the other terms of this settlement.

55. The effective date of this CAFO is the date that the CAFO is filed in the office of the Regional Hearing Clerk, after having been signed by the Regional Administrator or her designated representative and subjected to the requirements of Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).

56. This CAFO constitutes the entire agreement between the parties.

In the Matter of:
Elgin Community College
Docket No.

FOR EPA:

Dated: _____

Tinka G. Hyde
Director, Water Division
U.S. Environmental Protection Agency, Region 5

FOR RESPONDENT:

In the Matter of:
Elgin Community College
Docket No.

Dated:

Dr. David Sam, Ph.D.
President, Elgin Community College

In the Matter of:
Elgin Community College
Docket No.

FINAL ORDER

This CAFO is hereby approved. The Respondents are hereby ORDERED to comply with all of the terms of the CAFO effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This CAFO disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

By: _____
Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

Dated: _____

In the Matter of:

Elgin Community College

Docket No.

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement and Final Order", dated _____, 2013, was sent this day in the following manner to the addressees listed below:

Original and One Copy by hand delivery to:

LaDawn Whitehead
Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Copy by Overnight Delivery to:

The Honorable Susan L. Biro, Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, DC 20005

Copy by E-mail and Regular Mail to:

Elgin Community College, District No. 509
1700 Spartan Drive
Elgin, Kane County, Illinois 60123

Date

Charles Rodriguez, Student Aide

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF)

Elgin Community College District 509)
Elgin, Kane County, Illinois)
Respondent)

DOCKET NO. V-404-AO-13-

PROCEEDINGS UNDER SECTION 309(a))
OF THE CLEAN WATER ACT)
33 U.S.C. § 1319(a))

FINDINGS OF VIOLATION)
AND)
COMPLIANCE ORDER)
on CONSENT)

The following **FINDINGS** are made and **CONSENT ORDER** issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of U.S. EPA, Region 5, who has duly redelegated this authority to the undersigned Director, Water Division, EPA, Region 5, who hereby issues this Findings and Order.

A. FINDINGS

1. The Respondent in this matter is:

Elgin Community College, District No. 509
1700 Spartan Drive
Elgin, Kane County, Illinois 60123

2. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers ("Corps"), to issue permits for the discharge of dredged or fill material into navigable waters.

3. Section 301 of the CWA, 33 U.S.C. § 1311, prohibits the discharge of pollutants into navigable waters except in compliance with, inter alia, a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344.

4. The term "discharge of pollutants" is defined as "any addition of any pollutant to navigable waters from any point source...." 33 U.S.C. § 1362(12).

5. A "point source" is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure,

container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

6. A "pollutant" is defined as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).

7. "Wetlands" are defined as "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." 40 C.F.R. § 232.2(f).

8. Respondent owns and controls the property situated in located in Section 21, Township 41 N, Range 8 E, in the City of Elgin, Kane County, Illinois (the "Site") (Attachment1).

9. Between June 2009 and continuing through March 2012, Respondent, using backhoes, excavators, bulldozers and other earth moving equipment other excavation equipment dredged and filled approximately 5.0 acres of wetlands abutting wetlands of Otter Creek, a tributary to the Fox River, which is a navigable water of the United States, under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, respectively, 33 U.S.C. § 1344(a) and 33 U.S.C § 403, (Attachment 2).

10. Prior to initiating work in June 2009, as identified in Paragraph 9, above, Respondent completed the following activities on the site:

(a) In July 1991, Respondent submitted a Section 404 CWA permit application to the Corps. The permit application included a wetland delineation identifying "jurisdictional" wetlands located on the site adjacent to Otter Creek.

(b) In 1994, Kane County completed an assessment and a advanced identification of Wetlands and rated the wetlands on the site (approximately 91 acres), as wetland with high functional values for stabilizing vegetation, retainingg sediments, removing nutrients, and providing stormwater retention.

(c) In July 2002, Respondent submitted a Section 404 CWA permit application to the Corps including a wetland assessment delineating five wetland areas and four waters of the United States on the site.

(d) In August 2005, Respondents submitted a Section 404 CWA permit application to the Corps. The application included a wetland delineation which in part, re-affirmed the wetland assessment identified in Paragraph 10 (c), above.

11. On June 7, 2012, the Corps, issued a "cease and desist" (C& D) letter to Respondents alleging that dredged and fill materials were discharged into wetlands, identified in Paragraph 9, above, in violation of Sections 404 and 301 of the CWA, 33 U.S.C. §§1344 and 311, respectively. The violations alleged by the Corps were undertaken during construction of a new stormwater detention pond and expansion of a student parking lot.

12. On August 15, 2012, in consultation with the Corps, EPA, pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), issued an formal information request to Respondent seeking to clarify the nature, extent and circumstances surrounding the alleged violation, cited by the Corps in Paragraph 11, above.

13. On October 10, 2012, the Corps and EPA visited the site concluding the site and the wetlands are physically abutting Otter Creek, and are hydraulically connected to the Fox River, a navigable-in-fact water of the United States, under Section 10 of the Rivers and Harbors Act (RHA), 33 U.S.C. § 403.

14. At all times relevant to the activities in Paragraph 9, above, Respondents did not and presently do not have a Section 404 CWA permit, authorizing the discharge of dredged and fill materials into wetlands abutting Otter Creek.

15. The wetlands and other waters of the United States identified in Paragraph 9, above are bordering, contiguous or neighboring Otter Creek, which is tributary to the Fox River, an interstate and navigable waters of the United States.

16. The wetlands filled and/or disturbed by the filling activity referenced in Paragraph 9, above, are "waters of the United States" as defined at 40 C.F.R. § 232.2(q) and "navigable waters", as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

17. Respondent did not have and presently does not have a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of pollutants referenced in Paragraphs 9, above, into wetlands and other waters of the United States.

18. The Respondent is a "person(s)" within the meaning of the definition set forth in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

19. The machinery referenced in Paragraphs 9, above, constitutes a "point source" within the meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

20. The discharged dredged materials referenced in Paragraph 9, above, constitutes "pollutants" within the meaning of the definitions set forth in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. The placement of the material in the wetlands referenced in Paragraph 9, above, constitutes a "discharge of pollutants" within the meaning of the definition set forth in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

22. Each discharge by Respondent of pollutants into navigable waters without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

23. Each day the discharged material remains in the wetland without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

B. CONSENT ORDER

BASED UPON THE FOREGOING FINDINGS, and pursuant to the authority under Section 309(a)(3) of the CWA, 33 U.S.C. § 309(a)(3), vested in the Administrator, EPA, delegated to the Regional Administrator, and duly redelegated to the undersigned, **IT IS HEREBY ORDERED AND AGREED BY RESPONDENT AND EPA:**

1. Respondents immediately cease further discharges of fill material into the wetlands on the site, except in compliance with a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and the CWA, 33 U.S.C. § 1251, et seq.

2. Respondent has provided satisfactory and responsive answers to EPA's Section 308 information request, identified in Paragraph 12, above.

3. A Section 404 CWA permit may be issued by the Corps, pursuant to Section 404 (e) of the CWA, 33 U.S.C. § 1344(a) and 33 CFR § 323 (e)(2). Specifically, under Regional permit No. 6 (Attachment 4), the Corps may authorize any structure, work or discharge of dredged or fill material, remaining in place, or undertaken for mitigation, restoration or environmental benefit in compliance with "the terms of a final written non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, or the terms of an EPA 309(a) order or consent decrees resolving a violation of Section 404 of the Clean Water Act."

4. Within 90 days from the effective date of this Consent Order, Respondent agrees to obtain, consistent with the requirements of Paragraph B(3), above, authorization from the Corps for the dredged and fill materials to remain in place, provided that a minimum of 5:1 replacement of the wetland impacts occurs in the following manner:

- (a) A plan to restore the environmental benefits (functions and values) to no less than 19.0 acres] of on-site wetlands (Attachment 4) through restoration, enhancement, monitoring and permanent protection/management.

(b) A detailed implementation schedule identifying specific activity dates and milestones for initiating and completing all restoration, enhancement, monitoring and protection activities, including but not limited bidding dates, contract award dates, notices to proceed with construction initiation and planting, dates for construction and planting completion, and scheduling of monitoring/inspection reports to the Corps.

(c) A plan and proposal to purchase no less than 2.0 acres of additional wetland mitigation credits and a Corps approved mitigation bank.

5.

2. That within fifteen (15) days of your receipt of this Order, the Respondent U.S. FWS shall submit to U.S. EPA a written certification of its intent to comply with this Order.

3. That within sixty (90) days of your receipt of this Order, the Respondent U.S. FWS shall submit to U.S. EPA a written plan to remove all dredged spoil materials side-cast into the wetlands located in the Refuge site and the Kraatz site adjoining the Kraatz Ditch. Such actions are necessary to restore the Kraatz Ditch, as nearly as possible, to its original condition and contour (hereafter, "a Removal and Restoration Plan") and obtain compliance with the CWA.

4. The Removal and Restoration Plan shall include, but not be limited to the following specifications:

- a. A engineering survey (including cross-sections) and written description of the existing conditions and elevations of the Kraatz Ditch and adjoining wetland areas (see Exhibit 1);
- b. An engineering survey (including cross-sections) of the proposed conditions and elevations following removal of the dredged spoil and restoration of the Kraatz Ditch;
- c. An engineering survey (including cross-sections) and written description of any ditch plugs that may be planned for construction within the bed and bank of the Kraatz Ditch, necessary to restore hydrology to the Refuge site;
- d. A planting plan and written description of any soil erosion vegetative cover, necessary to control sediments and/or silt materials from impacting the Cache River following completion of construction;
- e. A detailed estimate of each activity, cost and/or expenditure by U.S.FWS to initiate and complete the Removal and Restoration Plan, as proposed;
- f. A project schedule, and;

- g. A written agreement between Respondent U.S.FWS and Respondent Kraatz allowing for reasonable access to the Kraatz site, necessary to initiate and complete the Removal and Restoration Plan.

5. That within thirty (30) days of approval by U.S. EPA of all or any portion of the Removal and Restoration Plan identified in Paragraph B3, above, including all modifications incorporated by U.S. EPA, Respondent U.S. FWS shall commence removal and restoration activities, as approved.

6. That by the date specified in the Removal and Restoration Plan and approved by U.S. EPA, pursuant to Paragraph B3 of the Order, above, Respondent U.S. FWS shall submit to U.S. EPA written certification that dredged and fill materials have been removed and that the Kraatz Ditch has been restored as nearly as possible to its original condition in accordance with the approved Removal and Restoration Plan. Such certification shall include photographs and/or videotape and "as built" drawing providing topographic information documenting the completed activities throughout the entire sites.

7. That submittals provided under Paragraphs B2, B3 and B6 this Order shall be certified and submitted by the Respondent U.S. FWS under authorized signature to the following:

David W. Schulenberg
Senior Enforcement Officer
Watersheds & Wetlands Branch
U.S. EPA, Region 5 (WW-16J)
77 West Jackson Street
Chicago, Illinois 60604-3590

Catherine Garypie
Associate Regional Counsel
U.S. EPA, Region 5 (CA-13J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3580

Daniel McClendon (Attn; Tyson Zobrist)
Chief, Regulatory Branch
U.S. Army Corps of Engineers, St. Louis District
1222 Spruce Street
St. Louis, Missouri 63103

U.S. EPA has the authority to use the information requested herein in an administrative, civil, or criminal action.

8. Neither the issuance of this Order by the U.S. EPA nor compliance with its terms affects Respondents' ongoing obligation to comply with the CWA or any other Federal, state or local law or regulation, nor does it preclude further enforcement action pursuant to 33 U.S.C. § 1319 for the violations cited herein.

9. Respondent U.S. FWS acknowledges and U.S. EPA agrees that compliance with this Consent Order does not relieve Respondents Kraatz, et. al. responsibility to comply with the AOC, issued by U.S. EPA on June 14, 2010 (Docket No. V-404-AO-10-02). Neither the issuance of this Consent Order by the U.S. EPA, nor compliance with this Consent Order by the Respondent U.S. FWS, shall be deemed to relieve the Respondent Kraatz, et. al, of liability for any penalty, remedy or sanction authorized to be imposed pursuant to Section 309(b), (c), or (g) of the CWA, 33 U.S.C. § 1319(b),(c) or (g), for any violation of applicable requirements of the CWA. U.S. EPA specifically reserves the right to seek any or all remedies authorized under these provisions for each and every violation specified in the ACO.

10. Neither the issuance of this Consent Order by the U.S. EPA, nor compliance with this Consent Order by the Respondent U.S. FWS, shall be deemed to relieve the Respondent Kraatz of liability for any penalty, remedy or sanction authorized to be imposed pursuant to Section 309(b), (c), or (g) of the CWA, 33 U.S.C. § 1319(b),(c) or (g), for any violation of applicable requirements of the CWA. U.S. EPA specifically reserves the right to seek any or all remedies authorized under these provisions for each and every violation specified in this Consent Order.

10. Violation of the terms of this Consent Order may result in the U.S. EPA taking further enforcement action under Section 309 of the CWA. The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. Specifically, U.S. EPA may assess civil administrative penalties of ten thousand dollars (\$27,500) per day of violation, up to a maximum of one hundred fifty-seven five hundred dollars (\$157,500) under 33 U.S.C. § 1319(g), or seek civil judicial penalties of \$27,500 per day of violation and civil injunctive relief for violations of the CWA under 33 U.S.C. § 1319(b).

11. Furthermore, U.S. EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c).

12. This Order becomes effective 10 days from the date Respondent U.S. FWS returns an signed and executed copy of the ACO on Consent to U.S. EPA at the address identified in Paragraph B7, above.

In the Matter of Dann R. Kraatz, et. al.
Docket No. V-404-AO-11-

Dated:

Tinka G. Hyde
Director, Water Division
U.S. Environmental Protection
Agency, Region 5

Dated:

Michael Brown
Refuge Manager
Cypress Creek Wildlife Refuge
U.S. Fish & Wildlife Service

CONFIDENTIAL

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF)

Elgin Community College District 509)
Elgin, Kane County, Illinois)
Respondent)

DOCKET NO. V-404-AO-13-

PROCEEDINGS UNDER SECTION 309(a))
OF THE CLEAN WATER ACT)
33 U.S.C. § 1319(a))

FINDINGS OF VIOLATION)
AND)
COMPLIANCE ORDER)
on CONSENT)

The following **FINDINGS** are made and **CONSENT ORDER** issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of U.S. EPA, Region 5, who has duly redelegated this authority to the undersigned Director, Water Division, EPA, Region 5, who hereby issues this Findings and Order.

A. FINDINGS

1. The Respondent in this matter is:

Elgin Community College, District No. 509
1700 Spartan Drive
Elgin, Kane County, Illinois 60123

2. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers ("Corps"), to issue permits for the discharge of dredged or fill material into navigable waters.

3. Section 301 of the CWA, 33 U.S.C. § 1311, prohibits the discharge of pollutants into navigable waters except in compliance with, inter alia, a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344.

4. The term "discharge of pollutants" is defined as "any addition of any pollutant to navigable waters from any point source...." 33 U.S.C. § 1362(12).

5. A "point source" is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure,

container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

6. A "pollutant" is defined as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).

7. "Wetlands" are defined as "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." 40 C.F.R. § 232.2(f).

8. Respondent owns and controls the property situated in located in Section 21, Township 41 N, Range 8 E, in the City of Elgin, Kane County, Illinois (the "Site") (Attachment1).

9. Between June 2009 and continuing through March 2012, Respondent, using backhoes, excavators, bulldozers and other earth moving equipment other excavation equipment dredged and filled approximately 5.0 acres of wetlands abutting wetlands of Otter Creek, a tributary to the Fox River, which is a navigable water of the United States, under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, respectively, 33 U.S.C. § 1344(a) and 33 U.S.C § 403, (Attachment 2).

10. Prior to initiating work in June 2009, as identified in Paragraph 9, above, Respondent completed the following activities on the site:

(a) In July 1991, Respondent submitted a Section 404 CWA permit application to the Corps. The permit application included a wetland delineation identifying "jurisdictional" wetlands located on the site adjacent to Otter Creek.

(b) In 1994, Kane County completed an assessment and a advanced identification of Wetlands and rated the wetlands on the site (approximately 91 acres), as wetland with high functional values for stabilizing vegetation, retainingg sediments, removing nutrients, and providing stormwater retention.

(c) In July 2002, Respondent submitted a Section 404 CWA permit application to the Corps including a wetland assessment delineating five wetland areas and four waters of the United States on the site.

(d) In August 2005, Respondents submitted a Section 404 CWA permit application to the Corps. The application included a wetland delineation which in part, re-affirmed the wetland assessment identified in Paragraph 10 (c), above.

11. On June 7, 2012, the Corps, issued a "cease and desist" (C& D) letter to Respondents alleging that dredged and fill materials were discharged into wetlands, identified in Paragraph 9, above, in violation of Sections 404 and 301 of the CWA, 33 U.S.C. §§1344 and 311, respectively. The violations alleged by the Corps were undertaken during construction of a new stormwater detention pond and expansion of a student parking lot.

12. On August 15, 2012, in consultation with the Corps, EPA, pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), issued an formal information request to Respondent seeking to clarify the nature, extent and circumstances surrounding the alleged violation, cited by the Corps in Paragraph 11, above.

13. On October 10, 2012, the Corps and EPA visited the site concluding the site and the wetlands are physically abutting Otter Creek, and are hydraulically connected to the Fox River, a navigable-in-fact water of the United States, under Section 10 of the Rivers and Harbors Act (RHA), 33 U.S.C. § 403.

14. At all times relevant to the activities in Paragraph 9, above, Respondents did not and presently do not have a Section 404 CWA permit, authorizing the discharge of dredged and fill materials into wetlands abutting Otter Creek.

15. The wetlands and other waters of the United States identified in Paragraph 9, above are bordering, contiguous or neighboring Otter Creek, which is tributary to the Fox River, an interstate and navigable waters of the United States.

16. The wetlands filled and/or disturbed by the filling activity referenced in Paragraph 9, above, are "waters of the United States" as defined at 40 C.F.R. § 232.2(q) and "navigable waters", as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

17. Respondent did not have and presently does not have a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of pollutants referenced in Paragraphs 9, above, into wetlands and other waters of the United States.

18. The Respondent is a "person(s)" within the meaning of the definition set forth in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

19. The machinery referenced in Paragraphs 9, above, constitutes a "point source" within the meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

20. The discharged dredged materials referenced in Paragraph 9, above, constitutes "pollutants" within the meaning of the definitions set forth in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. The placement of the material in the wetlands referenced in Paragraph 9, above, constitutes a "discharge of pollutants" within the meaning of the definition set forth in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

22. Each discharge by Respondent of pollutants into navigable waters without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

23. Each day the discharged material remains in the wetland without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

B. CONSENT ORDER

BASED UPON THE FOREGOING FINDINGS, and pursuant to the authority under Section 309(a)(3) of the CWA, 33 U.S.C. § 309(a)(3), vested in the Administrator, EPA, delegated to the Regional Administrator, and duly redelegated to the undersigned, **IT IS HEREBY ORDERED AND AGREED BY RESPONDENT AND EPA:**

1. Respondents immediately cease further discharges of fill material into the wetlands on the site, except in compliance with a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and the CWA, 33 U.S.C. § 1251, et seq.

2. Respondent has provided satisfactory and responsive answers to EPA's Section 308 information request, identified in Paragraph 12, above.

3. A Section 404 CWA permit may be issued by the Corps, pursuant to Section 404 (e) of the CWA, 33 U.S.C. § 1344(a) and 33 CFR § 323 (e)(2). Specifically, under Regional permit No. 6 (Attachment 4), the Corps may authorize any structure, work or discharge of dredged or fill material, remaining in place, or undertaken for mitigation, restoration or environmental benefit in compliance with "the terms of a final written non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, or the terms of an EPA 309(a) order or consent decrees resolving a violation of Section 404 of the Clean Water Act."

4. Within 90 days from the effective date of this Consent Order, Respondent agrees to obtain, consistent with the requirements of Paragraph B(3), above, authorization from the Corps for the dredged and fill materials to remain in place, provided that a minimum of 5:1 replacement of the wetland impacts occurs in the following manner:

- (a) A plan to restore the environmental benefits (functions and values) to no less than 19.0 acres] of on-site wetlands (Attachment 4) through restoration, enhancement, monitoring and permanent protection/management.

(b) A detailed implementation schedule identifying specific activity dates and milestones for initiating and completing all restoration, enhancement, monitoring and protection activities, including but not limited bidding dates, contract award dates, notices to proceed with construction initiation and planting, dates for construction and planting completion, and scheduling of monitoring/inspection reports to the Corps.

(c) A plan and proposal to purchase no less than 2.0 acres of additional wetland mitigation credits and a Corps approved mitigation bank.

5. All submittals under Paragraph B (4) (a)(b) and (c), above, shall be provided to:

Leesa Beal, Chief
Regulatory Branch
U.S. Army Corps of Engineers
Chicago District
111 North Canal Street
Chicago, Illinois 60606-7206

Keith Wozniak/Michael Machaelek
Regulatory Branch
U.S. Army Corps of Engineers
Chicago District
111 North Canal Street
Chicago, Illinois 60606-7206

David Schulenberg
Senior Enforcement Officer
U.S. EPA, Region 5
Water Division (WW-16J)
77 W. Jackson Boulevard
Chicago, Illinois 60604-3590

6. Respondent admits that the Administrator of EPA has jurisdiction of this proceeding pursuant to Sections 301 and 309 of the Act, 33 U.S.C. §§ 1311 and 1319.

7. Respondent neither admit nor deny the specific factual allegations and legal conclusions, identified in Paragraphs A(1) – A(12), above.

8. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of the Section 309(a)(3) Compliance Order on Consent under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

9. U.S. EPA has the authority to use the information requested herein in an administrative, civil, or criminal action.

10. Neither the issuance of this Order by the U.S. EPA nor compliance with its terms affects Respondents' ongoing obligation to comply with the CWA or any other Federal, state or local law or regulation, nor does it preclude further enforcement action pursuant to 33 U.S.C. § 1319 for the violations cited herein.

11. Neither the issuance of this Consent Order by the U.S. EPA, nor compliance with this Consent Order by the Respondent shall be deemed to relieve the Respondent of liability for any penalty, remedy or sanction authorized to be imposed pursuant to Section 309(b), (c), or (g) of the CWA, 33 U.S.C. § 1319(b),(c) or (g), for any violation of applicable requirements of the CWA. U.S. EPA specifically reserves the right to seek any or all remedies authorized under these provisions for each and every violation specified in this Consent Order.

10. Violation of the terms of this Consent Order may result in the U.S. EPA taking further enforcement action under Section 309 of the CWA. The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. Specifically, U.S. EPA may assess civil administrative penalties of twenty-seven thousand five hundred dollars (\$27,500) per day of violation, up to a maximum of one hundred fifty-seven five hundred dollars (\$157,500) under 33 U.S.C. § 1319(g), or seek civil judicial penalties of \$27,500 per day of violation and civil injunctive relief for violations of the CWA under 33 U.S.C. § 1319(b).

11. Furthermore, U.S. EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c).

12. This Order becomes effective 10 days from the date it is executed and signed by the authorized representative of EPA.

In the Matter of:
Elgin Community College
Docket No. V-404-AOC-13-

Dated:

Dr. David Sam, Ph.D.
President, Elgin Community College

Dated:

Tinka G. Hyde
Director, Water Division
U.S. Environmental Protection
Agency, Region 5